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SUBJECT: COSTA RICA CREEPS INTO CAFTA

REF: SAN JOSE 959 AND PREVIOUS (NOTAL)

11. (SBU) SUMMARY: Nearly six years after negotiations began, CAFTA-DR entered into force for Costa Rica on January 1, achieving a major policy objective of the USG, the Arias administration and the Embassy. Although the end-year holidays muted the headlines, there was some (characteristically) last-minute political drama, including the legislature's vote to approve the membership of the new telecommunications board (SUTEL), and appeals from President Arias (to the Ambassador) and Minister Arias (to the Secretary) to forgo the 2010 tariff rate quota (TRQ) holdback on sugar that will go into effect if the GOCR does not enact an IPR technical corrections bill in 2009. Economically, CAFTA EIF may have come just in time to help soften the impact of the US financial crisis on Costa Rica. Politically, EIF means the national legislature faces a virtually CAFTA-free zone for the first time since October 2005, freeing the Arias administration (in theory) to concentrate on other priorities such as fighting crime and improving infrastructure. CAFTA's completion should also disarm the PAC-led opposition, which has focused almost exclusively since 2006 on stopping CAFTA. The CAFTA telenovela remains a case study in dysfunctional democracy; the agreement required a national referendum and over three years of on-again, off-again legislative action during two Costa Rican administrations to come to fruition. END SUMMARY.

YES, IT IS REALLY OVER

12. (U) It ended with a whimper, not a bang. On December 23, as the USG began to shut down for the holidays, and after the GOCR had already started its two-week holiday hiatus, POTUS signed the requisite proclamation, the two sides quietly exchanged diplomatic notes (in the Department cafeteria), and the Costa Rican Embassy deposited the notes with the OAS in Washington. In a statement issued the same day, USTR Schwab was "pleased to celebrate the entry into force of this important multi-country agreement," which marked "an important milestone in our relationship with Costa Rica."

13. (U) GOCR statements were no less glowing. COMEX Minister Ruiz noted that "finally, the Arias administration is fulfilling the popular mandate given the government in the referendum of October 7, 2007." He added that with CAFTA EIF, Costa Rica was "in a strategic position to compete in the international market." Minister of the Presidency Rodrigo Arias expressed his "enormous satisfaction,"

stressing that "it is time to send positive signals to the rest of the world about our capacity to work together," and to "demonstrate our seriousness as a country to take decisions, and our determination to participate in the globalized world with excellence and success."

14. (U) The good news generated large headlines in leading (and pro-CAFTA) daily La Nacion on December 24. Other year-end coverage, although positive, reminded readers of the length of this ordeal, which began with negotiations in January 2003, moved to the Asamblea (national legislature) in October 2005 (after five other CAFTA partners had already ratified), witnessed the first national referendum on a trade agreement (and the first-ever referendum in Costa Rica) in October 2007, and required extensions in February and September 2008 to reach completion. (COMMENT: For those keeping score, since signing in August 2004, Costa Rica spent more time "fighting" for CAFTA than the United States spent fighting WWII. END COMMENT.) The media also noted the financial cost; over USD 850,000 in overtime pay and copying costs for the Asamblea alone (not to mention the cost to exporters -- primarily in the beleaguered textile industry --who lost opportunities and orders while waiting for EIF).

BUT NOT WITHOUT SOME (MORE) DRAMA

15. (SBU) There was plenty of last-minute political drama as January 1 drew near, however. On December 10, Minister Arias was a surprise participant in the Pathways to Prosperity Summit in Panama, joining FM Bruno Stagno and Minister Ruiz in their "pullaside" with the Secretary. His mission (according to COMEX sources): to ask that their be no "penalty" (i.e., no holdback) for Costa Rica,s completion of a needed IPR technical corrections bill after the January 2009 EIF target. (COMEX and USTR had been discussing a possible -- and generous -- TRQ holdback on sugar, which would only go into effect if the GOCR could not complete the last law by 2010.) In an interview upon his return from Panama, Ruiz quickly (and incorrectly) characterized the Secretary,s politely non-committal response as clearing the way for a condition-free EIF.

16. (U) On December 12, the Asamblea rejected two of the four names proposed for the new Superintendency for Telecommunications (SUTEL), the oversight board required for full CAFTA implementation. This ignited a political and legal firefight which put EIF in question until the last day of the legislative year, December 19. One of the two candidates rejected was from the Arias administration,s PUSC party pro-CAFTA allies. The dumped PUSC nominee challenged the legislature,s actions in the Constitutional Court (who rejected the case out of hand), but, backed by the Court,s refusal to hear the case, the Asamblea leadership was able to bend procedural rules enough to permit brief debate and swift (but last-minute) approval of two replacement nominees. (NOTE: The SUTEL board was sworn in on January 5.)

17. (SBU) Adding to the tension, the GOCR placed the IPR technical corrections bill on the legislative agenda December 15, prompting multi-party criticism of COMEX for its lack of transparency and for not launching the final bill sooner; a few (mostly opposition) members even called for Minister Ruiz to resign. For his part, Ruiz explained that the last bill was not required for EIF (it would have never been approved in time, anyway) and was intended simply to correct three "material errors" in CAFTA-related IPR legislation. COMEX staff confided to us that they would have launched the last bill sooner, but were waiting for the SUTEL vote to be completed. Miffed pro-CAFTA contacts in the legislature confirmed to us that COMEX had told them nothing about the last bill until it was placed on the agenda.

18. (SBU) The furor had faded by Christmas week, with the SUTEL board approved, the final CAFTA-related regulations promulgated and the agreement letters on insurance, telecommunications spectrum allocation and the TRQ holdback

signed, but President Arias threw one last curveball. In a call to the Ambassador on December 22, Arias claimed that the planned TRQ holdback was a "surprise" to him, and he reprised Minister Arias, request not to "penalize" Costa Rica for at last entering into force with nearly all the implementation requirements met. The Ambassador responded that the proclamation which would mark EIF for Costa Rica was ready for White House approval. The choice was thus to pull it back, if that could be done at all, likely forcing the GOCR to ask for yet another EIF extension, or to let things stand and proceed to EIF as planned, with the holdback. Faced with those options, Arias backed down.

THE DETAILS OF THE DEAL

¶9. (SBU) Once the SUTEL vote secured membership for the four nominees, the "deal closing" narrowed to a commitment letter and two side letters. The commitment letter described the terms for the GOCR,s entry into force predicated on the passing of the technical corrections bill (addressing the three outstanding IP issues, see Reftel). The three corrections represented USTR,s final position in a process that started with 20 issues and ultimately focused on three, all having material legal consequences counter to CAFTA. In addition, we learned that USTR requested a small modification to the technical corrections bill which will require an amendment by a cooperative legislator in the national assembly.

¶10. (SBU) The GOCR has until January 1, 2010 to pass the technical corrections bill. If it does not, the USG can exercise a condition to &withhold and/or suspend the application of benefits under the CAFTA-DR to Costa Rica to such extent as the United State deems appropriate.⁸ During the drafting of the commitment letter, USTR and COMEX discussed the holdback of tariff rate quotas for sugar (though not specified in the letter itself). If the GOCR passes the technical corrections bill (and it meets USTR,s approval) prior to January 1, 2010, any withholding or suspension of benefits becomes a moot point. The side letters address Costa Rica,s state insurance guarantee (pledging no competitive advantage for the state insurance entity INS) and a schedule for allocating telecommunications spectrum.

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THE GOCR: LOWER EXPECTATIONS; LOOK AHEAD
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¶11. (U) Despite the criticism against him, Ruiz was comfortable enough (and the Arias team obviously comfortable enough with him) to give in-depth interviews about the year ahead which were published on New Year,s Day. Ruiz set out to lower expectations. In light of the U.S. financial crisis, he predicted that CAFTA would help Costa Rica keep jobs and maintain exports, instead of generating major growth in either. He noted that the export sector directly or indirectly generated over a million jobs in Costa Rica, and that even with the global and regional downturn, exports were estimated to have grown five percent in 2008. CAFTA should help that trend continue. Ruiz described CAFTA as but one tool to help Costa Rica improve its competitiveness, and he looked forward to building on CAFTA by completing FTA/association negotiation agreements with the EU and China.

¶12. (U) Others in the export sector echoed Ruiz,s muted optimism. Edgar Herrera, Executive Director of the LAICA sugar cooperative lauded Costa Rica,s higher quota under CAFTA, which would permit annual exports of over 13,000 MT at preferential prices. Gabriela Llobet, Director of CINDE (a quasi-governmental investment development entity), described the growth in high-tech and service sector employment in Costa Rica in pre-CAFTA 2008, despite the financial crisis. With EIF, the outlook for those sectors should remain fairly bright. CABEI chief economist Pablo Rodas cautioned in the

media that CAFTA would not produce "an economic miracle," but coupled with the policies already in place, should continue to attract (and perhaps increase) FDI to Costa Rica. La Nacion editorialized on December 28 that although CAFTA brought "undoubtedly positive potential" for development, it was "just one more step" toward full development; much work remains to be done.

THE OPPOSITION (AND THE COALITION): NOW WHAT?

¶13. (SBU) The biggest short-term changes generated by CAFTA completion may not be economic, however, but political. Both the GOCR and the opposition are facing a (virtually) CAFTA-free political landscape in 2009. This should allow the Arias administration to focus on other legislative priorities set aside/slowed during the CAFTA epic, including completing the pending domestic security and anti-organized crime legislation, approving the USD 850 million IDB infrastructure loan, overhauling concessions laws (which should help with the infrastructure projects), and according to Minister Arias, having a better dialogue between the GOCR and the legislature. Without the centrifugal force of the CAFTA fight, however, the Arias team may face increasing distractions leading to legislative inertia as the campaigning heats up for the 2010 national elections. The SUTEL struggle and PUSC criticism of the organized crime bill suggest that the fissures will continue to grow in the old pro-CAFTA coalition. Both the PUSC and the Libertarian Party (ML), another erstwhile coalition member, are already describing themselves as opposition parties going into 2009.

¶14. (SBU) And what about the PAC-led CAFTA opposition? They begin 2009 with their primary platform OBE,d. Since October, PAC leader Otton Solis has claimed to have widespread Democratic support in the U.S. Congress (and in the region) to "renegotiate" CAFTA, and he visited Washington in November to make his case. However, backed by well-informed sources such as STAFFDEL Meacham, who visited Costa Rica in December, we have quietly made clear to legislative contacts that the new U.S. administration is likely to focus on many other, much higher-priority issues before turning to CAFTA, if at all. The word may be filtering back to Solis, who conceded to interviewers last week that with CAFTA now a fact, his/PAC,s time might be better spent focusing on the (so-called) CAFTA-complementary agenda: improving education, infrastructure and competitiveness. Solis is not likely to easily relinquish his attacks on the Arias administration, however.

¶15. (SBU) Like their party leader, the PAC faction may also be slow to truly back down. On December 18, the faction wrote Speaker Pelosi to allege that three of the CAFTA implementation laws (on telecom, trademarks and the UPOV treaty) had been improperly approved by the Constitutional Court, and to report that the PAC was consequently legally challenging those laws on technical grounds. (COMMENT: A more detailed report on this was emailed to WHA/CEN and H on December 30. We do not expect this after-the-fact technical challenge to go far, but it highlights that some in the PAC have not yet given up. END COMMENT.) Meanwhile, the most radical anti-CAFTA groups, who don,t necessarily support Solis and the PAC, have been largely silenced by EIF, although they still insist that the October 2007 referendum (and even Oscar Arias, 2006 election victory) were "rigged".

COMMENT: LESSONS IN DYSFUNCTIONAL DEMOCRACY

¶16. (SBU) The Arias administration can look back at 2008 with a sense of accomplishment and a sigh of relief. CAFTA, which became the centerpiece of Arias, agenda, has finally entered into force, and the once-sacred, state-run monopolies on insurance and telecommunications will now be opened to competition. If the GOCR could show enough discipline and

focus to enact 58 laws in 2008, including 13 to implement CAFTA, they should be able to complete the single IPR technical corrections bill fairly quickly. (On January 7, in fact, Asamblea President Francisco Pacheco publicly predicted smooth passage for the new law.) Completing CAFTA did show what can be done here, with determination and focus. We may point to the inordinate and repeated delays in getting to EIF, but this was a Herculean task for the Tico political system, and another historic accomplishment for an Arias administration.

¶17. (SBU) The CAFTA saga has prompted more thoughtful examination of Costa Rica's hyper-legalistic and largely dysfunctional democracy, which could eventually prompt some badly-needed reform. Supreme Court President Luis Paulino Mora acknowledged to the media at year's end that the legal framework which permits the Constitutional Court to review thousands of issues each year (including the CAFTA laws and CAFTA itself in 2007-2008) may require adjusting. "Political problems should be solved according to political criteria," he said, and not always by legal and constitutional means. Minister Arias himself ended 2008 floating the idea of a constituent assembly to modernize Costa Rica's archaic political and legal system. Key legislators are again talking of revising and streamlining parliamentary procedures to avoid the mountains of motions which slowed CAFTA. We'll see. Change of any sort does not come quickly or easily in Costa Rica, and with national elections just 13 months away, it will be tempting to toss any radical efforts to the next administration (and beyond).

¶18. (SBU) And what will we do with all our "free time" now that CAFTA is completed? EIF closes the major chapter, but not the entire book; CAFTA "implementation management" will also take time and energy. Working with the GOCR, we will highlight the benefits of CAFTA, keep expectations realistic and help U.S. companies take full advantage of the agreement. We will also continue to work with the GOCR on the "next big thing," the Merida Initiative, plus other aspects of domestic security and law enforcement, and continued capacity-building across ministries. There is plenty left to do as we help Costa Rica's democracy better deliver for its people.
CIANCHETTE